Court No. 2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 234 of 2002

The New India Assurance Company
through Divisional Manager,
Divisional Officer, Nainital Road
Opposite Judges Court, Haldwani,
District - Nainital

..... Appellant.

Versus

Dayal Ram alias Munna and another

..... Respondents.

.....

Sri T.A.Khan, learned counsel for the appellant,
Sri A.N.Sharma, learned counsel for the claimant/respondent No.1.
Sri Rakesh Thapaliyal, learned counsel for the respondent No.2.

Dated: 27th August, 2004

Hon'ble P.C.Verma,J.
Hon'ble B.S.Verma,J.

This appeal has been preferred by the Opp.party/appellant against the judgment and order dated 14.08.2002 passed by the Motor Accident Claims Tribunal/District Judge, Almora in Motor Accident Claim Petition No.32 of 1999, whereby the appellant-New India Assurance Company has been directed to pay Rs. 41,000/- as compensation to the claimants alongwith interest at the rate of 9% per annum.

2- Brief facts giving rise to this appeal are that on 12.10.1999, Dayal Ram alias Munna was travelling in a K.M.O.U. bus No. UP-22-7387 from Someshwar to Haldwani.When the bus reached near Hawalbagh, it fell down in a ravine *(Khud)* due to rash and negligent driving of the driver thereby Dayal Ram alias Munna received

grievous injuries and he was admitted in Base Hospital, Almora from 12.10.1999 to 14.10.1999. Thereafter the injured was taken to Dr. G.K. Hospital Bareilly. His right foot was fractured besides other injuries on the body and he spent Rs. 28,000/- on his medical treatment till 4.11.1999. Due to accident his school studies has been affected and career has become dark. His leg is not fit for proper movement and he has become physically unfit for competitions. The claimant has filed claim petition for compensation under Sec. 166 of the Motor Vehicles Act **(in short the Act)** to the tune of Rs. 2,00,000/- which was allowed accordingly.

3- The Opp.parties contested the claim petition before the Tribunal by filing their separate written statements denying all the allegations of the claim petition. The Tribunal on the pleadings of the parties framed necessary issues and after recording evidence of the parties allowed the claim petition accordingly. Feeling aggrieved, the Insurance Company has come in this appeal.

4- The learned counsel for the appellant has submitted before us that the appellant has a right to contest the case on merit under Section 170 of the Act on all the grounds and, therefore, argued that the Tribunal has not properly appreciated the evidence on record to determine the quantum of compensation. On scrutiny it is found that no application under Sec. 170 of the Act was filed by the appellant before the Tribunal which could indicate that permission was given by the Tribunal. The owner of the vehicle in question has contested the case before the Tribunal. The Tribunal in its judgment has not given any finding that there has been collusion between the owner and the claimants. Therefore, the appellant-Insurance Company cannot be allowed to challenge the

quantum of compensation by filing the present appeal. The appeal can be filed by the Insurance Company on limited grounds under the provisions of the Act. We are fortified in our view by the Apex Court judgment in the case of ***National Insurance Company Ltd. Chandigarh Vs. Nicolletta Rohtagi and others, reported in (2002) 7, Supreme Court Cases, Page 456.*** In that case, it has been observed by the Apex court that, ***"even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle."*** Thus in view of the above law laid down by the Apex Court, the contention raised by the learned counsel for the appellant is misconceived and is rejected.

5- In view of the aforesaid discussion, the appeal has no merit and is hereby dismissed. The impugned judgment and award is upheld. No order as to costs. Amount, if deposited in the appeal, shall be remitted to the Tribunal concerned within a period of three months from today.

(B.S.Verma,J.) **(P.C.Verma,J.)**

P.Singh